

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 263 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

J B SONI

Appearance:

MR MD PANDYA for Petitioners
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/09/1999

ORAL JUDGEMENT

Mr.Pandya is appearing for the petitioner. None appears for the respondent.

In this petition, the petitioner Board has challenged the judgement and award dated 13.10.1988 passed by the Presiding Officer, IIrd Labour Court,

Surat in Recovery Application No. 532 of 1986. The facts leading to the present petition, in short, are as under:-

The respondent herein who is a Junior Assistant working in the Surat Sub-Division of the petitioner Board approached the Labour Court, Surat by filing Recovery Application No. 532 of 1986 under Section 33(C)(2) of the Industrial Disputes Act, 1947 ("the I.D. Act" for short) and claimed that he was entitled to cash handling allowance of Rs.10/- per month w.e.f. 1.9.1985 till 31.3.1986 as per the terms of settlement dated 24.10.1981 and an amount of Rs.350/- per month w.e.f. 1.9.1985 to 31.3.1986 as travelling allowance and daily allowance as per the rules of the Board and accordingly, the respondent claimed the total amount of Rs.2520/- + Costs of the application. The said application filed by the respondent workman was contested by the petitioners on various grounds including the ground that bill collection - Cash collection allowance is paid to only those Junior Assistants who are entrusted with the actual work of bill collection and who in fact do the work of bill collection. Similarly, it was also contended that the question of payment of travelling allowance and daily allowance would arise only in respect of those employees who are asked to undertake travelling for the work of the Board since it is nothing but reimbursement.

Said Recovery Application was heard by the Labour Court and after hearing the parties, the Labour Court ordered that the respondent be paid Rs.70/- as Cash Allowance at the rate of Rs.10/- for the period from 1.9.1985 to 31.9.1986 and Rs.2450/- as Travelling Allowance for the said period. The petitioners were also directed to pay the costs which was quantified at Rs.100/-. Feeling aggrieved by the said judgement and award of the Labour Court, the petitioners have approached this Court by way of this petition under Article 227 of the Constitution of India.

This Court while admitting this petition has granted adinterim relief which was directed to continue by order of this Court dated 22.6.1992. In the present case, Learned Advocate Mr.Pandya appearing for the petitioner Board has raised the contention about the jurisdiction and power of the Labour Court while entertaining application under Section 33(C)(2) of the I.D. Act. The Labour Court has power to entertain such recovery application if any amount is due from an employer. Meaning thereby, the workman has to establish pre-existing rights and has to prove the said right to

which he is entitled under the Service Rules or Conditions or under the Statutory Provisions or under the Settlement. If the entitlement itself is disputed by the management than such disputed questions cannot be examined in recovery application while exercising powers under Section 33(C)(2) of the I.D. Act. The entitlement of the right has to be adjudicated under Section 10 of the I.D. Act by raising Industrial Dispute before the appropriate Forum. If the workman is entitled to receive any amount than the Labour Court can certainly go into the question but if that entitlement has been challenged and it has been denied that there is no any pre-existing right than the Labour Court has no jurisdiction to entertain such application while exercising powers under Section 33(C)(2) of the I.D. Act. In the instant case, before the Labour Court, the respondent workman has filed affidavit which was cross-examined by the Board. In para 4 (Page 24), it was admitted that because of transfer from Junior Assistant (Bill Collection) to Junior Assistant (Billing in Office). The work of Bill Collection has been stopped by the respondent workman and therefore he was not able to do the work in cash collection from 22.8.1985. The Labour Court has come to a conclusion that looking to the documents produced by the petitioner Board, the respondent workman has worked as Junior Assistant (Bill Collection) upto December 1985 is contrary to record and evidence. Learned Advocate Mr. Pandaya has submitted that the allowances in question are not attached to the post but are attached to the work which is required to be performed by the Junior Assistant while working as Junior Assistant, Bill Collection and Junior Assistant, Metre Reading. Admittedly, the respondent was not working as Junior Assistant in Bill Collection from 22.8.1985 and therefore, the Labour Court has committed gross error in allowing the claim of the respondent while exercising powers under Section 33(C)(2) of the I.D. Act. He has submitted that the error committed by the Labour Court is apparent on the face of record and therefore this Court should interfere while exercising jurisdiction under Article 227 of the Constitution of India. I am of the opinion that the Labour Court has no jurisdiction or power to decide the entitlement of the workman while exercising powers under Section 33(C)(2) of the I.D. Act and that entitlement is required to be adjudicated under Section 10 of the I.D. Act by raising Industrial Dispute before the appropriate Forum in accordance with law.

The similar view has been taken by this Court in reported decision 1998(1) GLH Pg.88 in the case of N.P. Transport Co. Vs. R.B. Waghela. In case of

Municipal Corporation of Delhi and Ganesh Razak and Anr. reported in 1995 (1) LLJ 395, the Hon'ble Apex Court had occasion to decide the scope of Section 33(C)(2) of the Act. The considering several earlier judgements including AIR 1964 SC 743 held that:-

"This decision itself indicates that the power of the Labour Court under Section 33-C(2) extends to interpretation of the award or settlement on which the the workman's right rests like executing courts' power to interpret decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer."

"The Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C (2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer, and, thereafter, for the purpose of implementation or enforcement thereof, some ambiguity requires interpretation is treated as incidental to the labour court's power under Section 33-C(2) like that of the executing court's power to interpret the decree for the purpose of its execution. In course of such exercise of such power, the Labour Court may interpret the basis of the claim made by the workman. However, it has no jurisdiction to consider and adjudicate where the workman is entitled to such benefit."

Therefore, I am of the opinion that the Labour Court has committed gross error in exercising the jurisdiction which was not vested in it and therefore, the impugned order passed by the Labour Court, Surat is required to be quashed and set aside. In the result, this petition is allowed. The impugned judgement and award passed by the Labour Court, Surat is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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